



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 1007
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MARY F. MCTIGUE
DIRECTOR

June 7, 1989
A0-89-14

Peter A. Caro, Esquire
Casner, Edwards & Roseman
30 Federal Street,
Boston, Massachusetts 02110

Dear Mr. Caro:

This letter is in response to your recent request for an advisory opinion concerning the applicability of M.G.L. c.55 to various activities your client, the Massachusetts Realtors Political Action Committee, wishes to undertake.

You have stated that the Massachusetts Realtors Political Action Committee (the "State PAC") was organized pursuant to M.G.L. c.55 to support candidates for election to office in the executive and legislative branches of state and local government. The National Realtors Political Action Committee ("RPAC") was organized pursuant to 2 U.S.C. section 433 to support candidates for election to federal office. On behalf of RPAC, the State PAC proposes to solicit contributions from the membership of the Massachusetts Association of Realtors, an organization comprised entirely of individuals. Individuals who are members of local boards of realtors within Massachusetts automatically become members of the Massachusetts Association of Realtors and the National Association of Realtors. Each organization is a non-profit trade association. When the State PAC receives contributions from the individual members on its own behalf and on behalf of RPAC, the contributions will be divided on a pre-determined basis of 35% to RPAC and 65% to the State PAC.

You have further stated that the State PAC would like to include its literature, including solicitations for contributions, in the periodic mailings made by various local boards of realtors to their individual members. The State PAC proposes to reimburse such local boards in proportion to its share of such mailings, paying about eight percent of the total postage costs. Conversely, the local boards or the individual members of such boards may propose to bear such costs as in-kind contributions. The local boards of realtors are not business corporations, nor are business corporations permitted to join the Massachusetts Association of Realtors as members.

You have posed a number of issues on which you seek advice. We will attempt to answer these issues by posing questions and following such questions with our reasoning.

1. Do the limitations on contributions from one political committee to another political committee, as contained in section 6 of M.G.L. c.55, apply if the first political committee is acting as an agent for the second in the solicitation and collection of contributions?

Section 1 of M.G.L. c.55 defines "contribution" as, among other things, "any . . . transfer of money or anything of value between political committees. . ."

Section 6 of M.G.L. c.55, states, in pertinent part: "A political committee not organized on behalf of an individual candidate may contribute to another political committee not organized on behalf of an individual candidate; provided however, that the aggregate of all such contributions for the benefit of any one such political committee shall not exceed in any one calendar year the sum of one thousand dollars."

A multi-candidate political committee organized under Massachusetts law is organized to receive contributions or make expenditures for the purpose of influencing the nomination or election of candidates. (See section 1 of M.G.L. c.55 and 970 C.M.R, section 2.02.) The campaign finance law does not contemplate having one political committee solicit and collect contributions on behalf of another political committee.

Therefore, it is the opinion of this office that any transfers of money or other things of value from the State PAC to RPAC would be considered to be contributions, and as such, would be subject to the limitations described above in section 6 of M.G.L. c.55.

2. What is the application of federal and state law, respectively, on the activities of the State PAC?

M.G.L. c.55 contains certain provisions related to political committees which wish to participate in Massachusetts campaign finance activity. For example, section 5 states, in part, that "[e]ach political committee shall organize by filing with the director . . . a statement of organization." Section 6 of M.G.L. c.55 and 970 C.M.R., section 2.06, set certain limitations on expenditures made by political committees. Section 18(e) prescribes reporting schedules for political committees.

M.G.L. c.55 does not purport to regulate campaign finance activity at the federal level, but to the extent a political committee organized with this office wishes to participate in campaign finance activity outside of the Commonwealth, it must nevertheless continue to meet the requirements of the Commonwealth's campaign finance law. Therefore it is the opinion of this office that the State PAC may not contribute more than \$1,000 to RPAC, regardless of any cooperative agreements between RPAC and the State PAC and regardless of what the federal law may permit RPAC to do.

In addition, it is the opinion of this office that so long as RPAC does not seek to participate in Massachusetts campaign finance activity, it need not meet the requirements of M.G.L. c.55. If RPAC wishes to participate in campaign finance activity in the Commonwealth (including contributing to the State PAC) it must comply with the provisions of M.G.L. c.55.

3 Are joint fundraising efforts by a political committee organized under Massachusetts law and a non-Massachusetts political committee permitted under M.G.L. c.55?

As noted above, a political committee must be organized under and in compliance with the provisions of M.G.L. c.55 in order for it to contribute to Massachusetts candidates or political committees.

Fundraising efforts undertaken jointly by two political committees, would, of necessity, require shared expenses such as printing, mailing, etc. Because of the joint nature of this activity, identifiable individual action taken by each of the State PAC (a Massachusetts political committee) and RPAC (an non-Massachusetts political committee) would be difficult to ascertain, even with the most careful accounting. There could be no assurance that the State PAC was not receiving any benefit from RPAC.

It is therefore the opinion of this office that the State PAC and RPAC may not conduct joint fundraising efforts.

4. May an independent depository be used to collect contributions and then may such contributions be allocated between the State PAC and RPAC?

Section 18 of M.G.L. c.55 requires that a political committee list on the reports it files "... the full name and residential address, listed alphabetically, of each person who has made a contribution . . . in an amount in

excess of fifty dollars in the reporting period, and such information for each contribution of less than or equal to the sum of fifty dollars, if the aggregate of all contributions received from such contributor within said reporting period is in excess of fifty, as the case may be, and the amount or value and the date of the contribution and the total of all contributions listed . . ."

In addition, sections 5 and 2 of M.G.L. c.55 require the treasurer of a political committee to keep detailed accounts of all contributions received by the committee, such accounts to include the full name and residential address of each contributor.

It is the opinion of this office that contributions may be collected in a separate depository and then allocated to each of the State PAC and RPAC, provided the State PAC receives and maintains the necessary information regarding the contributions collected in the depository in its behalf.

We would note that section 18 of M.G.L. c.55 further states that a political committee shall report each expenditure it makes and "the full name and address listed alphabetically, of each person to whom an expenditure is made, in the reporting period, in an amount or value of twenty-five dollars or more, the amount or value, date and purpose of each such expenditure . . ." We would therefore advise all contributions collected in the depository and allocated to the State PAC be forwarded to the State PAC as gross proceeds and not proceeds net of bank and other fees.

We would also advise that the State PAC account for and pay for the actual costs associated with the depository services used in administering its allocation of the contributions.

5. May the State PAC reimburse local boards of realtors on a pro rata basis for State PAC materials such boards include in their mailings?

Section 1 of M.G.L. c.55 defines a contribution as any "gift, subscription, loan, advance, deposit or money or thing of value . . ."

To the extent that the State PAC receives a benefit from a local board of realtors by having its materials included in a mailing by such board, such benefit shall construed as a contribution, unless the State PAC reimburses the board. The value derived by the State PAC should be determined as a percentage of the total cost of the mailing, such expense to include but not be limited to the actual cost of materials used, postage, personnel and other resource costs, and the

like.

It is therefore the opinion of this office that the State PAC may reimburse the local boards on a pro rata basis for the inclusion of the State PAC's materials with the boards' mailings. Such pro rata cost must be determined based on the actual aggregate cost of the mailing. If actual costs cannot be computed (for example, use of office resources such as copiers and word processors) the fair market value for such items may be used.

6. May the State PAC's proportionate share of the cost of the mailings be considered as an in-kind contribution from the boards of local realtors or from individual realtors comprising such boards?

Section 8 of M.G.L. c.55 prohibits business corporations from contributing to multi-candidate political committees. It is our understanding that in some instances individual members of local boards of realtors pay for their membership fees with corporate monies. It is therefore the opinion of this office if the local boards were to make an in-kind contribution of the State PAC's proportionate share of the cost of the mailings such an in-kind contribution would be funded, in part, by business corporation monies and therefore prohibited under M.G.L. c.55.

Section 7 of M.G.L. c.55 states, in part, that "[a]ny individual may . . . make campaign contributions to any other non-elected political committee not organized on behalf of any one candidate or not organized on behalf of a political party or not organized for the purpose of favoring or opposing the adoption or rejection of a question submitted to the voters; provided, however, that the aggregate of such campaign contributions to any one such political committee shall not exceed in any one calendar year the sum of one thousand dollars."

It is the opinion of this office that individual members of local boards would be permitted to make in-kind contributions to the State PAC provided that the individuals made the contributions directly, i.e. paid for the mailing costs directly. We would note that section 10 of M.G.L. c.55 states that "[n]o person shall, directly or indirectly, make a campaign contribution in any name except his own or in any manner for the purpose of disguising the true origin of the contribution . . ." Therefore, this office would consider an attribution of the mailing costs to individual members as in-kind contributions to the State PAC without actual payment of such costs by the individuals an attempt to circumvent the prohibition against the local boards from making such in-kind contributions. This office believes

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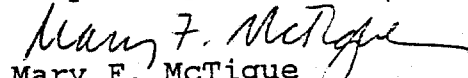
that the type of contribution allocation system described above in question 5 would, therefore, not be applicable in this situation.

With reference to your amended request dated February 7, 1989, we can offer no advice. You did not suggest that RPAC is seeking to organize as a political committee in Massachusetts. The regulations related to "affiliated" committees govern only Massachusetts political committees and therefore would have no effect political committees organized outside of Massachusetts.

This opinion has been rendered solely in the context of M.G.L. c.55 and solely on the basis of the representations made in your letters dated October 21, 1988 and February 7, 1989, as well as the letter dated August 16, 1988 from Anneke E. Shuman, Administrator for the State Pac.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,


Mary F. McTigue
Director